

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. See 86 Ill. Adm. Code 130.220. (This is a GIL).

September 22, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 27, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We have an Illinois corporation as a client desiring to lease a aircraft for a one year term, with no buy out provision, to fulfill a short term transportation need.

The actual sale amount being made in Illinois would be the sum of the monthly lease payments. Is this the amount that would be subject to sales tax?

We have been advised to contact you by PERSON at the Department of Revenue. She was unsure regarding amounts that would be taxable in this case. She indicated that it may be 6.25% of the total value of the aircraft, less sales taxes paid to another state by the owner, which is the same as sales tax that would apply to an aircraft sale. In this case, there was no tax paid by the current owner since the aircraft was purchased by a dealer for the purposes of resale (unless the sales tax paid credit applies to all owners in one or more states since the aircraft was new from the manufacturer). Since leasing is intended for a short term, it would appear an exorbitant amount to collect for a short term lease and the more appropriate amount would be to tax the amount of sale made in Illinois (12 times monthly lease payments).

We do have an immediate need to make a decision based upon your findings as to how the tax law applies in this case and would appreciate your early response. If possible, please respond by fax to #####.

Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See 86 Ill. Adm. Code 150.310(a)(3) enclosed.

Under Illinois law, lessors may not "pass through" their tax obligation on to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

Pursuant to the Use Tax Act, tangible personal property, acquired and used outside of the State of Illinois in the operation of a business for at least three months, will not be subject to Use Tax when moved into the State. See 86 Ill. Adm. Code 150.315(b), enclosed. Please note that Illinois requires an aircraft owner to provide proof that the Use Tax was paid or that no Use Tax was due on the purchase of the aircraft before the State will allow the aircraft to be registered in Illinois.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.